

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

ARMANDO ROJAS-LOPEZ,
Defendant.

No. CR-06-2052-FVS

ORDER

THIS MATTER comes before the Court based upon the defendant's motion for a reduction of his sentence. He is representing himself.

BACKGROUND

Judgment was entered on November 1, 2006. Armando Rojas-Lopez did not appeal. On July 9, 2007, he filed a motion requesting a two-level downward departure on the ground that, as an illegal alien, he will not be eligible for privileges that otherwise would be available to him while he is imprisoned.

RULING

Mr. Rojas-Lopez's motion will be denied. Although he characterizes his claim as an equal protection claim, it is not. It is a nonconstitutional sentencing issue that could have been presented to the Court of Appeals had he chosen to appeal his sentence. By failing to appeal, he waived the issue. *See United States v. Schlesinger*, 49 F.3d 483, 485 (9th Cir. 1995) ("nonconstitutional

1 sentencing errors that have not been raised on direct appeal have been
2 waived and generally may not be reviewed by way of 28 U.S.C. § 2255").

3 **IT IS HEREBY ORDERED:**

4 The defendant's motion for a reduction of sentence (**Ct. Rec. 60**)
5 is denied.

6 **IT IS SO ORDERED.** The District Court Executive is hereby
7 directed to enter this order and furnish copies to the defendant and
8 to counsel for the government.

9 **DATED** this 10th day of August, 2007.

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11 s/ Fred Van Sickle
Fred Van Sickle
12 United States District Judge
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